



Congress of the United States

House of Representatives

Washington, DC 20515

MEMORANDUM

November 12, 2019

To: Republican Members of the Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs

From: Republican Staff of the Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs

Subject: Key points of evidence from the Democrats' closed-door "impeachment inquiry"

On September 24, 2019, Speaker Pelosi unilaterally announced that the House of Representatives would initiate an inquiry into impeaching President Donald J. Trump concerning the President's telephone conversation with Ukrainian President Volodymyr Zelensky on July 25.¹ Democrats allege that President Trump "jeopardized U.S. national security by pressuring Ukraine to initiate politically-motivated investigations that could interfere in U.S. domestic politics."² The evidence, however, does not support this allegation.

In the 49 days since Speaker Pelosi's announcement, Rep. Adam Schiff, Chairman of the Permanent Select Committee on Intelligence, has been leading this inquiry from his Capitol basement bunker. The fact-finding is all unclassified, so the closed-door process is purely for information control. This arrangement has allowed Chairman Schiff—who has already publicly fabricated evidence and misled Americans about his interactions with the anonymous whistleblower³—to selectively leak cherry-picked information to help paint misleading public narratives while, at the same time, placing a gag order on Republican Members present.

Speaker Pelosi promised the "impeachment inquiry" would "treat the President with fairness."⁴ Chairman Schiff has broken this promise. In the course of the inquiry to date, Chairman Schiff has denied fundamental fairness and minority rights. He directed witnesses called by the Democrats not to answer Republican questions. He withheld deposition transcripts

¹ Speaker Nancy Pelosi, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019).

² H. Rpt. 116-266, 116th Cong. 2-3 (2019).

³ "Whistleblower Disclosure": *Hearing of the H. Perm. Sel. Comm. on Intelligence*, 116th Cong. (2019) (statement of Rep. Adam Schiff, Chairman); Glenn Kessler, *Schiff's false claim his committee had not spoken to the whistleblower*, WASH. POST, Oct. 4, 2019 (awarding Chairman Schiff "four Pinnochios" for "clearly mak[ing] a statement that was false").

⁴ Speaker Nancy Pelosi, Transcript of Pelosi Weekly Press Conference Today (Oct. 2, 2019).

from Republican members. He broke with precedent and offered no due process protections for the President.

As Chairman Schiff now moves his inquiry from his basement bunker to public hearings, this memorandum updates Republican Members about the key points of evidence learned to date in the Democrats' "impeachment inquiry." The body of evidence to date does not support the Democrat allegation that President Trump pressured Ukraine to conduct investigations into the President's political rivals for his political benefit in the 2020 election. The body of evidence to date does not support the Democrat allegations that President Trump covered up misconduct or obstructed justice.

Democrats will allege, however, that President Trump abused his authority by leveraging a face-to-face meeting with President Zelensky and U.S. security assistance to Ukraine to force Ukraine to conduct two "political" investigations: one into the role of Vice President Biden's son, Hunter Biden, on the board of a Ukrainian energy company called Burisma, and the other into allegations of Ukrainian interference in the U.S. presidential election in 2016.

Four key pieces of evidence are fatal to the Democrats' allegations. Stripping away the hyperbole and hysteria, these indisputable pieces of evidence show that there was no "Treason, Bribery, or other high Crimes and Misdemeanors," as required by the U.S. Constitution. These facts are:

- The July 25 call summary—the best evidence of the conversation—shows no conditionality or evidence of pressure;
- President Zelensky and President Trump have both said there was no pressure on the call;
- The Ukrainian government was not aware of a hold on U.S. security assistance at the time of the July 25 call; and
- President Trump met with President Zelensky and U.S. security assistance flowed to Ukraine in September 2019—both of which occurred without Ukraine investigating President Trump's political rivals.

The body of evidence shows instead that President Trump holds a deep-seated, genuine, and reasonable skepticism of Ukraine due to its history of pervasive corruption. The President has also been vocal about his skepticism of U.S. foreign aid and the need for European allies to shoulder more of the financial burden for regional defense. Public reporting shows how senior Ukrainian officials interfered in the 2016 U.S. presidential campaign in favor of Secretary Clinton and in opposition to then-candidate Trump—including some officials who President Zelensky retained in his government. Seen in this light, any reluctance on the President's part to meet with President Zelensky or to provide taxpayer-funded assistance to Ukraine is entirely reasonable.

Democrats want to impeach President Trump because unelected and anonymous bureaucrats disagreed with the President's decisions and were discomforted by his telephone conversation with President Zelensky. The Democrat impeachment narrative flips our system of

government on its head. The federal bureaucracy works for the President. The President works for the American people. And President Trump is doing what Americans elected him to do.

BACKGROUND

To appropriately understand the events in question—and most importantly, assess the President’s state of mind during his interaction with President Zelensky—context is necessary. This context shows that President Trump has a deep-seated, genuine, and reasonable skepticism of Ukraine and U.S. taxpayer-funded foreign aid, independent of and preceding any mention of potential investigations of Ukraine’s interference in the 2016 elections or Hunter Biden’s involvement with Burisma, a notoriously corrupt company.

1. Ukraine has a long history of pervasive corruption.

Since it became an independent nation following the collapse of the Soviet Union, Ukraine has been plagued by systemic corruption. *The Guardian* has called Ukraine “the most corrupt nation in Europe”⁵ and Ernst & Young cites Ukraine among the three most-corrupt nations of the world.⁶ Corruption is so pervasive in Ukraine that in 2011, 68.8% of Ukrainian citizens reported that they had bribed a public official within the preceding twelve months.⁷ Pervasive corruption in Ukraine has been one of the primary impediments to Ukraine joining the European Union.⁸ Corruption-related concerns also figure prominently in the E.U.-Ukrainian Association Agreement, the document establishing a political and economic association between the E.U. and Ukraine.⁹

State Department witnesses called by the Democrats during the “impeachment inquiry” confirmed Ukraine’s reputation for corruption. Deputy Assistant Secretary of State for European and Eurasian Affairs George Kent described Ukraine’s corruption problem as “serious” and said corruption has long been “part of the high-level dialogue” between the United States and Ukraine.¹⁰ Ambassador Marie Yovanovitch, the former U.S. Ambassador to Ukraine, testified

⁵ Oliver Bullough, *Welcome to Ukraine, the Most Corrupt Nation in Europe*, GUARDIAN, Feb. 6, 2015.

⁶ 14th Global Fraud Survey, ERNST & YOUNG, (2016), [https://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/\\$FILE/EY-corporate-misconduct-individual-consequences.pdf](https://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/$FILE/EY-corporate-misconduct-individual-consequences.pdf) (noting that 88% of Ukrainian’s agree that “bribery/corrupt practices happen widely in business in [Ukraine]”). See also Viktor Tkachuk, *People First: The Latest in the Watch on Ukrainian Democracy*, KYIV POST, (Sept. 11, 2012), <https://www.kyivpost.com/article/opinion/op-ed/people-first-the-latest-in-the-watch-on-ukrainian-democracy-5-312797.html>.

⁷ *Fighting Corruption in Ukraine: Ukrainian Style*, GORSHENIN INST. (Mar. 7, 2011), http://gpf-europe.com/upload/iblock/333/round_table_eng.pdf.

⁸ See, e.g., Vladimir Isachenkov, *Ukraine’s integration into West dashed by war and corruption*, ASSOC. PRESS, Mar. 26, 2019.

⁹ E.U.-Ukraine Ass’n Agreement, art. 14, Mar. 21, 2014, 57 Off. J. of the E.U.. L161/3 (“In their cooperation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security.”).

¹⁰ Deposition of George Kent, in Wash., D.C., at 105, 151 (Oct. 15, 2019) [hereinafter “Kent deposition”].

that in Ukraine “corruption is not just prevalent, but frankly is the system.”¹¹ Ambassador Bill Taylor, the current chargé d’affaires in Kyiv, said corruption in Ukraine is a “big issue.”¹² Ambassador Kurt Volker, the former Special Representative for Ukraine Negotiations, testified that “Ukraine has a long history of pervasive corruption throughout the economy[,] throughout the country, and it has been incredibly difficult for Ukraine as a country to deal with this, to investigate it, to prosecute it.”¹³ He later elaborated:

Ukraine had for decades a reputation of being just a corrupt place. There are a handful of people who own a disproportionate amount of the economy. Oligarchs, they use corruption as kind of the coin of the realm to get what they want, including influencing the Parliament, the judiciary, the government, state-owned industries. And so businessmen generally don’t want to invest in Ukraine, even to this day, because they just fear that it’s a horrible environment to be working in, and they don’t want to put – expose themselves to that risk. I would have to believe that President Trump would be aware of that general climate.¹⁴

2. President Trump has a deep-seated, genuine, and reasonable skepticism about Ukraine due to its history of pervasive corruption.

President Trump’s views on Ukraine have been colored by the country’s history of pervasive corruption. The Democrats’ witnesses described how President Trump holds a deep-seated skepticism of Ukraine, a view that witnesses said was genuine and reasonable given the country’s history of corruption.

Multiple Democrat witnesses offered firsthand testimony of President Trump’s skeptical view of Ukraine, going as far back as the President’s first year in office. Ambassador Volker explained that “President Trump demonstrated that he had a very deeply rooted negative view of Ukraine based on past corruption. And that’s a reasonable position. Most people who would know anything about Ukraine would think that.”¹⁵ He elaborated that the President’s concern about Ukraine was genuine, and that this concern caused a delay in the meeting with President Zelensky.¹⁶ Ambassador Volker explained:

So the issue as I understood it was this deep-rooted, skeptical view of Ukraine, a negative view of Ukraine, preexisting 2019, you know, going back. When I started this, I had one other meeting with

¹¹ Deposition of Ambassador Marie L. Yovanovitch, in Wash., D.C., at 18 (Oct. 11, 2019) [hereinafter “Yovanovitch deposition”].

¹² Deposition of Ambassador William B. Taylor, in Wash., D.C., at 86 (Oct. 22, 2019) [hereinafter “Taylor deposition”].

¹³ Transcribed interview of Ambassador Kurt Volker, in Wash., D.C., at 76 (Oct. 3, 2019) [hereinafter “Volker transcribed interview”].

¹⁴ *Id.* at 148-49.

¹⁵ *Id.* at 30.

¹⁶ *Id.* at 41, 295.

President Trump and [then-Ukrainian] President Poroshenko. It was in September of 2017. And at that time he had a very skeptical view of Ukraine. So I know he had a very deep-rooted skeptical view. And my understanding at the time was that even though he agreed in the meeting that we had with him, say, okay, I'll invite him, he didn't really want to do it. And that's why the meeting kept being delayed and delayed.¹⁷

Other testimony confirms Ambassador Volker's assessment. Ambassador Yovanovitch recalled the President's skepticism, saying that she also observed it firsthand during President Trump's meeting with President Poroshenko in September 2017.¹⁸ She testified:

Q. Were you aware of the President's deep-rooted skepticism about Ukraine's business environment?

A. Yes.

Q. And what did you know about that?

A. That he—I mean, he shared that concern directly with President Poroshenko in their first meeting in the Oval Office.¹⁹

Dr. Fiona Hill, former senior director at the National Security Council, also confirmed President Trump's skepticism. She testified:

I think the President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he's not alone, because everyone has expressed great concerns about corruption in Ukraine.²⁰

Catherine Croft, Ambassador Volker's deputy at the State Department, likewise confirmed that President Trump was skeptical of Ukraine due to its history of corruption, explaining: "[H]e described his concerns being that Ukraine was corrupt, that it was capable of being a very rich country, and that the United States shouldn't pay for it, but instead, we should be providing aid through loans."²¹

3. Senior Ukrainian government officials interfered in the 2016 U.S. presidential election in opposition to President Trump.

President Trump's skepticism about Ukraine was compounded by statements made by senior Ukrainian government officials in 2016 that were critical of then-candidate Trump and

¹⁷ *Id.* at 41.

¹⁸ Yovanovitch deposition, *supra* note 11, at 142.

¹⁹ *Id.*

²⁰ Deposition of Dr. Fiona Hill, in Wash., D.C., at 118 (Oct. 14, 2019) [hereinafter "Hill deposition"].

²¹ Deposition of Catherine Croft, in Wash., D.C., at 31 (Oct. 30, 2019) [hereinafter "Croft deposition"].

supportive of his opponent, former Secretary of State Hillary Clinton. Although Democrats have attempted to discredit these assertions as “debunked,” the publicly available statements by Ukrainian leaders speak for themselves.

In August 2016, less than three months before the election, Valeriy Chaly, then-Ukrainian Ambassador to the United States, authored an op-ed in a U.S. newspaper criticizing candidate Trump for comments he made about Russia’s occupation of Crimea.²² Ambassador Chaly wrote that candidate Trump’s comments “have raised serious concerns in [Kyiv] and beyond Ukraine.”²³ Although President Zelensky dismissed Ambassador Chaly on July 19, 2019,²⁴ the ambassador’s op-ed still remains on the website of the Ukrainian Embassy in the United States.²⁵

Later that month, the *Financial Times* published an article asserting that President Trump’s candidacy led “Kyiv’s wider political leadership to do something they would never have attempted before: intervene, however indirectly, in a US election.”²⁶ The article quoted Serhiy Leshchenko, a Ukrainian Member of Parliament, to detail how the Ukrainian government was supporting Secretary Clinton’s candidacy.²⁷ The article explained:

Though most Ukrainians are disillusioned with the country’s current leadership for stalled reforms and lackluster anti-corruption efforts, Mr. Leshchenko said events of the past two years had locked Ukraine on to a pro-western course. **The majority of Ukraine’s politicians, he added, are “on Hillary Clinton’s side.”**²⁸

The *Financial Times* reported that during the U.S. presidential campaign, former Ukrainian Prime Minister Arseniy Yatsenyuk had warned on Facebook that candidate Trump “challenged the very values of the free world.”²⁹ On Twitter, Ukrainian Internal Affairs Minister Arsen Avakov called Trump a “clown” who is “an even bigger danger to the US than terrorism.”³⁰ In a Facebook post, Minister Avakov called Trump “dangerous for Ukraine and the US” and said that Trump’s Crimea comments were the “diagnosis of a dangerous misfit.”³¹ Minister Avakov continues to serve in President Zelensky’s government.

²² See Valeriy Chaly, *Ukraine’s ambassador: Trump’s comments send wrong message to world*, THE HILL, Aug. 4, 2016.

²³ *Id.*

²⁴ Zelensky dismisses Valeriy Chaly from post of Ukraine’s envoy to US, KYIV POST (July 19, 2019).

²⁵ Embassy of Ukraine in the United States of America, *Op-ed by Ambassador of Ukraine to the USA Valeriy Chaly for the Hill: “Trump’s comments send wrong message to world,”* <https://usa.mfa.gov.ua/en/press-center/publications/4744-posol-ukrajini-vislovyuvannya-trampa-nadsilajuty-nevirnij-signal-svitu>.

²⁶ Roman Olearchyk, *Ukraine’s leaders campaign against ‘pro-Putin’ Trump*, FINANCIAL TIMES, Aug. 28, 2016.

²⁷ *Id.*

²⁸ *Id.* (emphasis added).

²⁹ *Id.*

³⁰ Kenneth P. Vogel & David Stern, *Ukrainian efforts to sabotage Trump backfire*, POLITICO, Jan. 11, 2017.

³¹ *Id.*

In January 2017, a *Politico* article by current-*New York Times* reporter Ken Vogel detailed the Ukrainian effort to “sabotage” the Trump campaign.³² According to Vogel’s reporting, the Ukrainian government worked with a Democrat operative and the media in 2016 to boost Secretary Clinton’s candidacy and hurt then-candidate Trump. The article reported:

Ukrainian government officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office. They also disseminated documents implicating a top Trump aide in corruption and suggested they were investigating the matter, only to back away after the election. And they helped Clinton’s allies research damaging information on Trump and his advisers, a *Politico* investigation found.³³

The *Politico* article detailed how a Democrat operative “traded information and leads” with staff at the Ukrainian embassy and how the Ukrainian embassy “worked directly with reporters researching Trump, [Trump campaign manager Paul] Manafort, and Russia to point them in the right directions.”³⁴ The article quoted a Ukrainian political officer at the embassy as saying that he was instructed not to speak to the Trump campaign “because [candidate Trump] was critical of Ukraine” and “Hillary is going to win.”³⁵

In addition, testimony from a 2018 transcribed interview of Nellie Ohr, a contractor for Fusion GPS, the political intelligence firm hired to gather information about candidate Trump, shows that Ukrainian parliamentarian Leshchenko—the same politician who said that Ukraine was “on Hillary Clinton’s side” in 2016—was a Fusion GPS source for information about Trump campaign manager Paul Manafort.³⁶

Multiple witnesses called by the Democrats testified that these Ukrainian actions during the 2016 election campaign likely colored President Trump’s views of Ukraine. Ambassador Volker said:

Q. And you mentioned that the President was skeptical, had a deep-rooted view of the Ukraine. Is that correct?

A. That is correct.

Q. And that, whether fair or unfair, he believed there were officials in Ukraine that were out to get him in the run-up to his election?

³² *Id.* Although Democrats reflexively dismissed the information presented in this article during closed-door depositions, neither *Politico* nor Vogel have retracted the story.

³³ *Id.*

³⁴ *Id.* In April 2019, two years after the *Politico* article, then-Ambassador Chaly issued a statement to *The Hill* denying that the Ukrainian embassy sought to interfere in the election. See *Official April 25, 2019 statement of the Ukrainian embassy in Washington to The Hill concerning the activities of Democratic National Committee Alexandra Chalupa during the 2016 U.S. election*, <https://www.scribd.com/document/432699412/Ukraine-Chaly-Statement-on-Chalupa-042519>.

³⁵ *Id.*

³⁶ See Transcribed Interview of Nellie Ohr, in Wash., D.C., at 113-15 (Oct. 19, 2018).

A. That is correct.

Q. So, to the extent there are allegations lodged, credible or uncredible, if the president was made aware of those allegations, whether it was via *The Hill* or, you know, via Mr. Giuliani or via cable news, if the President was made aware of these allegations, isn't it fair to say that he may, in fact, have believed they were credible?

A. Yes, I believe so.³⁷

Ambassador Sondland testified:

Q. Did [President Trump] mention anything about Ukraine's involvement in the 2016 election?

A. I think he said: They tried to take me down. He kept saying that over and over.

Q. In connection with the 2016 election?

A. Probably, yeah.

Q. That was what your understanding was?

A. That was my understanding, yeah.³⁸

Ambassador Taylor testified:

Q. So isn't it possible that Trump administration officials might have a good-founded belief, whether true or untrue, that there were forces in the Ukraine that were operating against them?

A. [B]ased on this [January 2017] *Politico* article, which, again, surprises me, disappoints me because I think it's a mistake for any diplomat or any government official in one country to interfere in the political life of another country. That's disappointing.³⁹

4. President Trump has been clear and consistent in his view that Europe should pay its fair share for regional defense.

Since his 2016 presidential campaign, President Trump has emphasized his view that U.S. taxpayer-funded foreign assistance should be spent wisely and cautiously. As President, he

³⁷ Volker transcribed interview, *supra* note 13, at 70-71.

³⁸ Deposition of Ambassador Gordon D. Sondland, in Wash., D.C. at 75 (Oct. 17, 2019).

³⁹ Taylor deposition, *supra* note 12, at 101.

has continued to be critical of sending U.S. taxpayer dollars to foreign countries and has asked our allies to share the financial burden for international stewardship.

In a March 2016 interview with the *New York Times*, then-candidate Trump said: “Now, I’m a person that—you notice I talk about economics quite a bit [in foreign policy] because it is about economics, because we don’t have money anymore because we’ve been taking care of so many people in so many different forms that we don’t have money.”⁴⁰ That same month, candidate Trump spoke to CBS News about U.S. spending to the North Atlantic Treaty Organization (NATO), a collective defense alliance between the U.S., Canada, and European countries. He said then:

NATO was set up when we were a richer country. We’re not a rich country anymore. We’re borrowing, we’re borrowing all of this money . . . NATO is costing us a fortune and yes, we’re protecting Europe with NATO but we’re spending a lot of money. Number one, I think the distribution of costs has to be changed.⁴¹

As president, President Trump has continued to press European allies to contribute more to NATO defense. Jens Stoltenberg, the NATO Secretary-General, acknowledged that President Trump’s stance has helped NATO member countries to increase defense spending, commending the President on “his strong message on burden sharing.”⁴²

* * *

Members cannot properly assess President Trump’s mindset during his July 25 phone conversation with President Zelensky without understanding this context. President Trump has generally been skeptical of foreign assistance, believing that European allies should contribute their fair share to regional defense. President Trump has had, for years preceding the call, a deep-seated, genuine, and reasonable skepticism toward Ukraine due to its pervasive corruption. President Trump was well aware of actions by senior Ukrainian government officials to work for his defeat in the 2016 election. These experiences colored President Trump’s interaction with President Zelensky.

KEY POINTS OF EVIDENCE

At its core, the Democrats’ “impeachment inquiry” centers on the interaction between two individuals: President Trump and President Zelensky. The summary of their July 25 call shows no conditionality, and both presidents have said they felt no pressure. President Trump never raised the issue of security assistance during the call, even though evidence suggests it had been delayed by that time. Ultimately, the delay on the security assistance cleared and President Trump and President Zelensky met face-to-face without Ukraine investigating the President’s political rivals. These facts undercut the Democrat allegations.

⁴⁰ Maggie Haberman & David Sanger, *Transcript: Donald Trump Expounds on His Foreign Policy Views*, N.Y. TIMES, Mar. 26, 2016.

⁴¹ Shayna Freisleben, *A Guide to Trump’s Past Comments about NATO*, CBS NEWS, Apr. 12, 2017.

⁴² David Greene, *After Trump’s NATO Criticism, Countries Spend More on Defense*, NPR.ORG, May 18, 2018.

1. The summary of the July 25 phone conversation showed no conditionality or pressure on Ukraine to investigate the President's political rivals.

The best evidence of the telephone conversation between President Trump and President Zelensky is the contemporaneous summary prepared by White House Situation Room staff. As transcribed, the call summary denotes laughter, pleasantries, and compliments exchanged between President Trump and President Zelensky. The summary does not evince any threats, coercion, intimidation, or indication of a *quid pro quo*—as even Democrats have acknowledged.⁴³ The summary bears absolutely no resemblance to Chairman Schiff's self-described "parody" interpretation of the call.⁴⁴

Democrats have seized on the President's phrasing—"I would like you to do us a favor though"⁴⁵—to accuse the President of pressuring President Zelensky to target his political rivals for his political benefit.⁴⁶ Democrats omit, however, the remainder of his sentence. The full sentence shows that President Trump was not asking President Zelensky to investigate his political rivals, but rather asking him to assist in "get[ting] to the bottom" of foreign interference in the 2016 election.⁴⁷ This reading is supported by President Trump's subsequent reference to Special Counsel Robert Mueller, who had testified the day before about his findings,⁴⁸ and to Attorney General William Barr, who has initiated an official inquiry into the origins of the Russian collusion hoax.⁴⁹ Also undercutting the Democrat allegation of pressure, President Zelensky did not express any concern that President Trump had raised the allegations about foreign interference in the 2016 election.

In fact, the Democrats' witnesses testified that it would be appropriate for Ukraine to investigate allegations of corruption, including allegations about 2016 election interference. Ambassador Volker testified that he "always thought [it] was fine" for Ukraine to investigate allegations about 2016 election interference.⁵⁰ Dr. Hill similarly testified that it is "not actually completely ridiculous" for President Zelensky's administration to investigate allegations of corruption arising from prior Ukrainian administrations.⁵¹

Democrats have also seized on the President's passing reference to former Vice President Joe Biden and his son, Hunter Biden, referring to Hunter Biden's position on the board of

⁴³ See, e.g., *MSNBC Live with Craig Melvin* (MSNBC television broadcast Sept. 25, 2019) (interview with Rep. Ro Khanna) (calling evidence of a *quid pro quo* "irrelevant").

⁴⁴ *Whistleblower Disclosure*, *supra* note 3.

⁴⁵ The White House, *Memorandum of Telephone Conversation 3* (July 25, 2019).

⁴⁶ See, e.g., *Whistleblower Disclosure*, *supra* note 3 (statement of Rep. Adam Schiff).

⁴⁷ *Memorandum of Telephone Conversation*, *supra* note 45, at 3.

⁴⁸ "Oversight of the Report on the Investigation into Russian Interference in the 2016 Presidential Election: Former Special Counsel Robert S. Mueller, III": Hearing before the H. Comm. on the Judiciary, 116th Cong. (2019).

⁴⁹ See, e.g., Adam Goldman et al., *Barr assigns U.S. Attorney in Connecticut to review origins of Russia inquiry*, N.Y. TIMES, May 13, 2019.

⁵⁰ Volker transcribed interview, *supra* note 13, at 146.

⁵¹ Hill deposition, *supra* note 20, at 394.

Burisma, a Ukrainian company known for its corruption.⁵² The call summary shows, however, that President Trump and President Zelensky did not discuss Hunter Biden substantively.⁵³ President Zelensky did not even reply to President Trump's passing reference before the conversation continued to a different subject.⁵⁴

Nonetheless, there are legitimate questions about Hunter Biden's position on Burisma's board. Burisma was founded by Mykola Zlochevsky, who served as Ukraine's Minister of Ecology and Natural Resources from 2010 to 2012.⁵⁵ During Zlochevsky's tenure in the Ukrainian government, Burisma received oil exploration licenses without public auctions.⁵⁶ According to the *New York Times*, Hunter Biden and two other well-connected Democrats—Christopher Heinz, then-Secretary of State John Kerry's stepson, and Devon Archer—“were part of a broad effort by Burisma to bring in well-connected Democrats during a period when the company was facing investigations backed not just by domestic Ukrainian forces but by officials in the Obama administration.”⁵⁷ In 2016, the Obama Justice Department fined a Hong Kong subsidiary of a multinational bank for a similar scheme, with then-Assistant Attorney General Leslie Caldwell explaining that “[a]warding prestigious employment opportunities to unqualified individuals in order to influence government officials is corruption, plain and simply.”⁵⁸

Evidence suggests that Hunter Biden's role on Burisma's board was a concern during the Obama Administration. In May 2014, the *Washington Post* reported that “[t]he appointment of the vice president's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst. No matter how qualified Biden is, it ties into the idea that U.S. foreign policy is self-interested, and that's a narrative Vladimir Putin has pushed during Ukraine's crisis.”⁵⁹ Deputy Assistant Secretary George Kent testified that while he served as acting Deputy Chief of Mission in Kyiv in early 2015, he raised concerns directly to Vice President Biden's office that Hunter Biden's role on Burisma's board “could create the perception of a conflict of interest.”⁶⁰ Kent said that the “message” he received back was that because Vice President Biden's elder son, Beau, was dying of cancer there was no “bandwidth” to deal with any other family issues.⁶¹ Ambassador Yovanovitch similarly testified that the Obama State Department actually prepared her to address Hunter Biden's role on Burisma if she received a question about it during her Senate confirmation hearing to be ambassador to Ukraine in June 2016. She explained:

⁵² *Memorandum of Telephone Conversation*, *supra* note 45, at 4.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Paul Sonne & Laura Mills, *Ukrainians see conflict in Biden's anticorruption message*, WALL ST. J., Dec. 7, 2015.

⁵⁶ *Id.*

⁵⁷ Kenneth P. Vogel & Iuliia Mendel, *Biden faces conflicts of interest questions that are being promoted by Trump and allies*, N.Y. TIMES, May 1, 2019.

⁵⁸ Press Release, U.S. Dep't of Justice, JPMorgan's Investment Bank in Hong Kong Agrees to Pay \$72 Million Penalty for Corrupt Hiring Scheme in China (Nov. 17, 2016), <https://www.justice.gov/opa/pr/jpmorgan-s-investment-bank-hong-kong-agrees-pay-72-million-penalty-corrupt-hiring-scheme>.

⁵⁹ Adam Taylor, *Hunter Biden's new job at a Ukrainian gas company is a problem for U.S. soft power*, WASH. POST, May 14, 2014.

⁶⁰ Kent deposition, *supra* note 10, at 227.

⁶¹ *Id.*

Q. And you may have mentioned this when we were speaking before lunch, but when did the issues related to Burisma first get to your attention? Was that as soon as you arrived in country?

A. Not really. I first became aware of it when I was being prepared for my Senate confirmation hearing. So I'm sure you're familiar with the concept of questions and answer and various other things. And so there was one there about Burisma, and so, you know, that's when I first heard that word.

Q. Were there any other companies that were mentioned in connection with Burisma?

A. I don't recall.

Q. And was it in the general sense of corruption, there was a company bereft with corruption?

A. The way the question was phrased in this model Q&A was, what can you tell us about Hunter Biden's, you know, being named to the board of Burisma.

Q. Did anyone at the State Department – when you were coming on board as the new ambassador, did anyone at the State Department brief you about this tricky issue, that Hunter Biden was on the board of this company and the company suffered from allegations of corruption, and provide you guidance?

A. Well, there was that Q&A that I mentioned.⁶²

The call summary itself shows no indication of conflict, intimidation, or pressure. President Trump never conditioned a face-to-face meeting on any action by President Zelensky. President Trump never mentioned U.S. security assistance to Ukraine. President Zelensky never verbalized any disagreement, discomfort, or concern about any facet of the U.S.-Ukrainian relationship or President Trump's comments.

2. Both President Zelensky and President Trump have publicly and repeatedly said there was no pressure to investigate the President's political rivals.

Since President Trump voluntarily released the content of the July 25 phone conversation, both President Zelensky and President Trump have said publicly and repeatedly there was no pressure to investigate President Trump's political rivals. President Zelensky's

⁶² Yovanovitch deposition, *supra* note 11, at 150-53.

statements are particularly important, as Democrats allege that he was the target of the pressure campaign. President Zelensky has variously asserted that “nobody pushed . . . me,” “I was never pressured,” and there was no “blackmail.”

On September 25, President Zelensky and President Trump met face-to-face for a bilateral meeting during the United Nations (U.N.) General Assembly in New York. The presidents jointly participated in a media availability, during which President Zelensky asserted that he felt no pressure.⁶³ President Zelensky said:

Q. President Zelensky, have you felt any pressure from President Trump to investigate Joe Biden and Hunter Biden?

A. I think you read everything. So I think you read text. I’m sorry, but I don’t want to be involved to democratic, open elections — elections of USA. **No, you heard that we had, I think, good phone call. It was normal. We spoke about many things. And I — so I think, and you read it, that nobody pushed — pushed me.**⁶⁴

President Zelensky again reiterated that he was not pressured to investigate President Trump’s political rivals during an interview with *Kyodo News*, a Japanese media outlet, published on October 6. *Kyodo News* quoted President Zelensky as saying, “I was never pressured and there were no conditions being imposed” on a face-to-face meeting or U.S. security assistance to Ukraine.⁶⁵ President Zelensky denied “reports by U.S. media that [President] Trump’s requests were conditions” for a face-to-face meeting or U.S. security assistance.⁶⁶

On October 10, during an all-day media availability in Kyiv, President Zelensky again emphasized that he felt no pressure to investigate President Trump’s political rivals. President Zelensky said there was “no blackmail” during the conversation, explaining: “This is not corruption. It was just a call.”⁶⁷

In addition, on September 21—before President Trump had even declassified and released the call summary—Ukrainian Foreign Minister Vadym Prystaiko denied that President Trump had pressured President Zelensky to investigate President Trump’s political rivals.⁶⁸ Foreign Minister Prystaiko said:

⁶³ Press Release, The White House, Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting (Sept. 25, 2019), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-zelensky-ukraine-bilateral-meeting-new-york-ny/>.

⁶⁴ *Id.* (emphasis added).

⁶⁵ *Ukraine president denies being pushed by Trump to investigate Biden*, *Kyodo News*, Oct. 6, 2019.

⁶⁶ *Id.*

⁶⁷ *Ukraine’s president says ‘no blackmail’ in Trump call*, *BBC*, Oct. 10, 2019.

⁶⁸ “Trump did not pressure Zelenskyy, Ukraine is independent state” — Foreign Minister Prystaiko, *Hromadske*, Sept. 21, 2019.

I know what the conversation was about and I think there was no pressure. There was talk, conversations are different, leaders have the right to discuss any problems that exist. This conversation was long, friendly, and it touched on a lot of questions, including those requiring serious answers.⁶⁹

Similarly, Ambassador Taylor testified that he had dinner with Oleksandr Danylyuk, then-Secretary of the National Security and Defence Council of Ukraine, on the night of the phone conversation between President Trump and President Zelensky.⁷⁰ He testified that Danylyuk said that the Ukrainian government “seemed to think that the call went fine, the call went well. He wasn’t disturbed by anything. He wasn’t disturbed that he told us about the phone call.”⁷¹

Like President Zelensky, President Trump has repeatedly and publicly denied that he pressured President Zelensky to investigate his political rivals. During the September 25 bilateral meeting with President Zelensky, President Trump said to the assembled members of the media: “There was no pressure. And you know there was—and, by the way, you know there was no pressure. All you have to do it see it, what went on the call.”⁷² When asked whether he wanted President Zelensky to “do more” to investigate Vice President Biden, President Trump responded: “No. I want him to do whatever he can. This was not his fault; he wasn’t there. He’s just been here recently. But whatever he can do in terms of corruption, because the corruption is massive.”⁷³

Democrats will assert that due to the power imbalance between the United States and Ukraine, Ukraine’s ongoing war with Russia, and Ukraine’s need for U.S. support to repel the Russian threat, President Zelensky would not dare state any issue or concern he may have had with President Trump’s remarks. However, there is no evidence that President Zelensky ordered the opening of an investigation related to any of the matters discussed on the July 25 phone call, thus undercutting this Democrat assertion. In addition, Democrat witnesses explained that President Trump has more strongly assisted and equipped Ukraine to deter Russian aggression than President Obama did. Most notably, President Trump finally provided Ukraine with lethal defensive weapons instead of just blankets.⁷⁴

3. The Ukrainian government was not aware that U.S. security assistance was delayed at the time of the July 25 phone call.

Evidence also suggests that the Ukrainian government never even knew that U.S. security assistance was delayed until some point in August 2019, long after the July 25 phone call between President Trump and President Zelensky. Although the assistance was delayed at the

⁶⁹ *Id.*

⁷⁰ Taylor deposition, *supra* note 12, at 80.

⁷¹ *Id.*

⁷² Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting, *supra* note 63.

⁷³ *Id.*

⁷⁴ See, e.g., Hill deposition, *supra* note 20, at 196; Yovanovitch deposition, *supra* note 11, at 140-41; Volker transcribed interview; Volker transcribed interview, *supra* note 13, at 84-87.

time of the July 25 call, President Trump never raised the assistance with President Zelensky or implied that the aid was in danger. As Ambassador Volker testified, because Ukrainian officials were unaware of the hold, “there was no leverage implied.”⁷⁵ This evidence undercuts the allegation that the President withheld U.S. security assistance to pressure President Zelensky to investigate his political rivals.

Most of the Democrat witnesses, including Ambassador Taylor, traced their knowledge of a hold to a July 18 interagency conference call, during which the Office of Management and Budget (OMB) announced a hold on security assistance to Ukraine.⁷⁶ However, the two U.S. diplomats closest to the Ukrainian government—Ambassador Volker and Ambassador Taylor—testified that Ukraine did not know about the delay “until the end of August,” six weeks later, after it was reported publicly on August 28.⁷⁷

Ambassador Volker, the chief interlocutor with the Ukrainian government, testified that he never informed the Ukrainians about the delay.⁷⁸ The Ukrainian government only raised the issue with Ambassador Volker after reading about the delay in *Politico* in late August.⁷⁹ Explaining why the delay was “not significant,” Ambassador Volker testified:

- Q. Looking back on it now, is [the delayed security assistance] something, in the grand scheme of things, that’s very significant? I mean, is this worthy of investigating, or is this just another chapter in the rough and tumble world of diplomacy and foreign assistance?
- A. In my view, **this hold on security assistance was not significant. I don’t believe – in fact, I am quite sure that at least I, Secretary Pompeo, the official representatives of the U.S., never communicated to Ukrainians that it is being held for a reason.** We never had a reason. And I tried to avoid talking to Ukrainians about it for as long as I could until it came out in *Politico* a month

⁷⁵ Volker transcribed interview, *supra* note 13, at 124-25.

⁷⁶ See, e.g., Taylor deposition, *supra* note 12, at 27.

⁷⁷ Volker transcribed interview, *supra* note 13, at 125, 266-67; Taylor deposition, *supra* note 12, at 119-20. While a couple of sources have suggested without specificity that Ukrainian officials were aware of the hold before then, none alleges Ukrainian awareness before August. Lt. Col. Vindman recalled receiving “light queries” from his Ukrainian embassy counterparts about the aid in either early- or mid-August, but he was unable to pinpoint specific dates, or even the week, that he had such conversations. Deposition of Lt. Col. Alexander Vindman at 135-37, 189-90 (Oct. 29, 2019). Lt. Col. Vindman testified that Ukrainian questions about the delay were not “substantive” or “definitive” until around the time of the Warsaw summit, on September 1. *Id.* at 189-90. Croft testified that two individuals from the Ukrainian embassy approached her about a hold on security assistance at some point before August 28, but Croft told them she “was confident that any issues in process would get resolved.” Croft deposition, *supra* note 21, at 86-87. A *New York Times* story claimed that unidentified Ukrainian officials were aware of a delay in “early August” 2019 but said there was no stated link between that delay and any investigative demands. Andrew E. Kramer & Kenneth P. Vogel, *Ukraine knew of aid freeze by early August, undermining Trump defense*, N.Y. TIMES, Oct. 23, 2019.

⁷⁸ Volker transcribed interview, *supra* note 13, at 80.

⁷⁹ *Id.*; see Caitlin Emma & Connor O’Brien, *Trump holds up Ukraine military aid meant to confront Russia*, POLITICO, Aug. 28, 2019.

later because I was confident we were going to get it fixed internally.⁸⁰

Ambassador Taylor similarly testified that the Ukrainian government was not aware of the delay of U.S. security assistance until late August 2019. He explained:

Q. So, based on your knowledge, nobody in the Ukrainian government became aware of a hold on military aid until 2 days later, on August 29th.

A. That's my understanding.

Q. That's your understanding. And that would have been well over a month after the July 25th call between President Trump and President Zelensky

A. Correct

Q. So you're not a lawyer, are you, Ambassador Taylor?

A. I am not.

Q. Okay. So the idea of a *quid pro quo* is it's a concept where there is a demand for an action or an attempt to influence action in exchange for something else. And in this case, when people are talking about a *quid pro quo*, that something else is military aid. So, if nobody in the Ukrainian government is aware of a military hold at the time of the Trump-Zelensky call, then, as a matter of law and as a matter of fact, there can be no *quid pro quo* based on military aid. I just want to be real clear that, again, as of July 25th, you have no knowledge of a *quid pro quo* involving military aid.

A. July 25th is a week after the hold was put on the security assistance. And July 25th, they had a conversation between the two presidents where it was not discussed.

Q. And to your knowledge, nobody in the Ukrainian government was aware of the hold?

A. That is correct.⁸¹

Other testimony from the Democrats' witnesses in closed-door depositions, still unreleased by Chairman Schiff and therefore unavailable to the American public, supports the point that U.S.

⁸⁰ Volker transcribed interview, *supra* note 13, at 80.

⁸¹ Taylor deposition, *supra* note 12, at 119-20.

officials did not convey to Ukraine that security assistance was delayed, much less the notion that the delay was due to President Trump seeking political investigations.

4. The United States provided security assistance to Ukraine and President Trump met with President Zelensky without Ukraine ever investigating President Trump's political rivals.

Evidence also shows that U.S. security assistance to Ukraine was released and President Zelensky met with President Trump without Ukraine investigating President Trump's political rivals. These facts significantly undermine the Democrat allegation that President Trump used either as leverage to pressure Ukraine to investigate his political rivals.

On September 11, 2019, OMB released the U.S. security assistance to Ukraine.⁸² Ukraine subsequently received this assistance. The U.S. disbursed this assistance without Ukraine ever acting to investigate President Trump's political rivals.

On September 25, President Trump and President Zelensky met during the U.N. General Assembly in New York.⁸³ President Trump and President Zelensky were scheduled to meet nearly a month earlier, on September 1 in Warsaw, but Hurricane Dorian forced President Trump to change his plans.⁸⁴ President Trump and President Zelensky met publicly without Ukraine ever investigating President Trump's political rivals.

Ambassador Volker said that President Trump and President Zelensky had a "positive" meeting. He testified:

Q. Turning back to President Trump's skepticism of Ukraine and the corruption there, do you think you made any inroads in convincing him that Zelensky was a good partner?

A. I do. I do. I attended the President's meeting with President Zelensky in New York on, I guess it was the 25th of September. And I could see the body language and the chemistry between them was positive, and I felt that this is what we needed all along.⁸⁵

Ambassador Taylor testified that the meeting was "good" and President Trump "left pleased that they had finally met face to face."⁸⁶ Ambassador Taylor said there was no discussion about investigations during the September 25 meeting.⁸⁷

* * *

⁸² *Id.* at 40.

⁸³ Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting, *supra* note 63.

⁸⁴ Volker transcribed interview, *supra* note 13, at 130.

⁸⁵ *Id.* at 87-88.

⁸⁶ Taylor deposition, *supra* note 12, at 288.

⁸⁷ *Id.*

These four key points undercut the Democrat impeachment narrative that President Trump leveraged U.S. security assistance and a presidential meeting to force Ukraine to investigate the President's political rivals. The summary of the presidential conversation showed no pressure; President Zelensky, the target of the alleged pressure campaign, felt no pressure; Ukraine did not know of the alleged leverage, the delayed security assistance, at the time of the presidential conversation; and, finally, Ukraine received what it wanted without doing anything in return.

CONCLUSION

The Democrats' closed-door "impeachment inquiry" has generated over a hundred hours of testimony from 15 witnesses. The American people observed none of that closed-door testimony, only learning about developments from selective leaks of cherry-picked information. The subsequently released transcripts did not—and could not—convey tone, body language, and other nonverbal signs used to assess a witness's credibility. The transcripts cannot be a substitute for live witness testimony.

Now as the Democrats move their proceedings into open hearings, their process is still one-sided, partisan, and fundamentally unfair. There is no co-equal subpoena power. There are no due process protections for the President. There is no guarantee that Chairman Schiff will call witnesses put forward by Republicans. In fact, Chairman Schiff has already denied the minority's request to call the anonymous whistleblower whose complaint initiated the inquiry.⁸⁸

Notwithstanding this unprecedented partisanship, the evidence shows that President Trump had a deep-seated, genuine, and reasonable skepticism toward Ukraine, and a vocal position that Europe should contribute more to regional defense. The summary of President Trump's conversation with President Zelensky reflects no conditionality or pressure, and President Zelensky himself said he felt no pressure. President Trump never raised U.S. security assistance to President Zelensky, and ultimately the assistance was released and a presidential meeting occurred without Ukraine investigating the President's political rivals. Simply put, the evidence gathered to date does not support the Democrat allegation that President Trump pressured Ukraine to investigate the President's political rivals for his benefit in the 2020 presidential campaign. The evidence gathered does not establish an impeachable offense.

#

⁸⁸ Letter from Adam Schiff, Chairman, H. Perm. Select Comm. on Intel., to Devin Nunes, Ranking Member, H. Perm. Select Comm. on Intel. (Nov. 9, 2019) ("The whistleblower's testimony is therefore redundant and unnecessary.").